IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 164 of 2003.

Judgment reserved on: 2.1.2006.

Decided on: 9th January, 2006.

Smt.Harmeet Kaur and others **.....Appellants.**

VERSUS

Harish Kumar and others **.....Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr.B.K. Malhotra, Advocate.**

For the Respondents : **Mr.Lalit Sharma, counsel for respondents No.1 & 2.**
Mr.G.D.Sharma, counsel for respondent No.3.

Deepak Gupta, Judge

This appeal by the claimants under Section 173 of the Motor Vehicles Act is directed against the award of the learned Motor Accident Claims Tribunal, Mandi, H.P., in Claim Petition No. 86 of 1998 decided on 31.12.2002 whereby the claim petition filed by the claimants has been dismissed.

2. Brief facts of the case are that the claimants who are the widow, minor children and mother of late Sh.Pritam Singh filed a claim petition under Section 166 of the Motor Vehicles Act. It is alleged that on 1.6.1997 the deceased alongwith one un-named person were

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

travelling on a scooter. The scooter was going from Pandoh side to Mandi. When the scooter was 7 km. away from Mandi, truck No.HP-34-0662 carrying some wooden material came from Mandi side. It was being driven in a negligent manner and hit the scooter. It is alleged that the deceased and the other person on the scooter became unconscious and they were removed from the site of the accident by one Satnam Singh who was coming towards Mandi.

3. The owner and driver of the truck filed a reply in which they stated that before they reached the spot an accident had already taken place and no accident had taken place with their truck No.HP-34-0662. The Insurance Company took up the plea that according to the investigation conducted by it through Sh.Prem Nath, retired Dy.S.P. no accident of the scooter had taken place with the truck and the accident occurred due to skidding of scooter only.

4. The parties led evidence. It would be pertinent to mention that the claimants in the claim petition did not mention who was the pillion rider. However, during the course of the proceedings his name was disclosed to be Amarjit Singh. Thereafter, the learned Tribunal vide its order dated 24.9.2002 formed an opinion that the statement of pillion rider Amarjit Singh is necessary to decide the matter and accordingly the Criminal Ahlmad of the Court of CJM, Mandi as well as Amarjit Singh were examined as court witnesses.

5. PW-2 is one Satwant Singh. According to him on 1.6.1997 he was coming in his Maruti Van towards Mandi and about 7 k.ms before Mandi he found that two Sikh gentlemen had fallen down on the road alongwith one scooter. They were lying towards the hillside. One truck, which was loaded with wood used for making wooden boxes, was standing on the other side of the road. He recognized both the persons. He further states that in the meantime one District Attorney came in his car. Thereafter, Satnam Singh brought the injured to Mandi and his family came in the car of the District Attorney. According to him the accident took place at about 5-6 p.m. in the evening. He states that there were no other persons at the site of the accident. He states that he had not made any inquiries regarding the cause of accident from the driver of the truck, which was standing on the spot.

6. PW-5 Harbans Singh is the father of the deceased. According to him after the death of his son he had gone to the site of the accident. He further deposes that Satwant Singh PW-2 had told him that the truck, which was standing, was loaded with wooden slats used for making wooden boxes. He further states that then he also talked to Amarjit Singh who was the pillion rider who informed him that there was a collision with a truck. Then he went to the police post Pandoh. There he saw the scooter and on the bumper of the scooter there were tyre marks of the truck. According to him he asked the police officials for permission to take photographs of the

scooter but they did not permit him to do so. Thereafter, he made a complaint to the Superintendent of Police that a proper inquiry should be conducted and also went to the forest barrier. He admitted that his complaint to the police was Ext.DA.

7. PW-6 is Sh.D.N.Gautam, the District Attorney. According to him on 1.6.1997 at about 7 p.m. he was coming from Pandoh side towards Mandi. About 6/7 k.m. before Mandi he found two Sikh gentlemen lying on the road alongwith their scooter on the left hand side. He further states that a truck was standing on the other side of the road facing Kullu and one person was standing near the truck but he could not say whether he was the driver or conductor of the truck. This witness states that he requested many persons coming towards Mandi side to carry the injured to hospital but none agreed. Thereafter, one Sikh gentleman came in a private van and reluctantly agreed to take the injured persons to Mandi hospital. The family of the Sikh gentleman shifted to his car. He states that he does not know the number of the truck standing on the other side of the road. He also could not say whether the accident had taken place between 5.30 to 6 p.m. He denied the suggestion that the van of PW-2 in which the injured was brought to Mandi had reached the spot prior to him. He further states that he had spent about 10 minutes asking the people to stop on the way before anybody stopped.

8. RW-3/1 is the driver of the truck and he states that he had crossed the Bindribani barrier at

about 7.10 p.m. and no accident took place with his truck. According to him when he reached on the spot the scooter was lying there and no injured persons were there at the spot. He has denied the suggestion that any accident took place between his truck and the scooter.

9. RW-3/3 Jodh Singh has proved the register of the Bindribani check post copy of which is Ext.R-1.

10. RW-3/5 P.R.Sharma, Sub Judge-cum- JMIC, Palwal deposed that in the year 1997 he was posted as Sub Judge-cum-JMIC (1), Mandi. According to him on 25.6.1997 an application was presented for recording the statement of one Amarjit Singh. He states that thereafter he adjourned the application after lunch so that Amarjit Singh who was to make the statement could think over the matter. He has proved the copy of the order-sheet Ext.R-2. Thereafter, the applicant appeared before him and after he had satisfied himself that Amarjit Singh voluntarily wants to make the statement, his statement was recorded, copy of which is Ext.R-3. He states that he had recorded the statement according to what was stated by Amarjit Singh. He also recorded his certificate in this regard which is Ext.R-5. In cross-examination he has admitted that Amarjit Singh was not known to him personally and he could not say whether police officials were accompanying Amarjit Singh when his statement was recorded.

11. RW-3/6, Head Constable Bhola Shankar has proved the original rapat, which was recorded by him on

2.6.1997 copy of which is Ext.R-6. He states that this rapat was lodged at the instance of ASI Ajit Singh.

12. As mentioned above the Court also examined two witnesses. Amarjit Singh CW-2 stated that he was coming on the scooter from Pandoh towards Mandi as pillion rider. A truck came on a fast speed from the opposite side and struck against the scooter. He could not give the number of the truck or the name of the driver. He also admitted in cross examination that both he and the deceased were under the influence of liquor at the time of accident. He admitted the fact that his statement was recorded by the Magistrate. However, he states that his statement was never read over to him. Though he admits his signatures on the application Ext.R-2 but he states that he has not given any application for recording his statement. According to him police officials were present when his statement was recorded. In cross-examination by the petitioners he has stated that his statement was recorded at the instance of the police and he has only signed the same.

13. Some of the documents, which are relevant to decide the issue of negligence, may also be referred to. Ext.R-6 is the report lodged on 2.6.1997. This is recorded on the statement of Amarjit Singh. In this statement first recorded with the police on 2.6.1997 soon after the accident there is no mention of any accident with the truck and it is only mentioned that the scooter had suddenly skidded and the accident took place. Ext.R-1 is the copy of the forest check post register.

According to this register truck No.HP-34-0662 had crossed the barrier at 7.7 p.m. and it was loaded with Safeda (phaties) and headed toward Kullu.

14. Ext.R-2 is the copy of the application filed by A.S.Bedi to the Additional CJM Mandi to record his statement in which it is mentioned that the accident took place because the scooter skidded. In this application it is mentioned that he wants his statement to be recorded since Harbans Singh father of the deceased is threatening and coercing him to make a false statement. On this application the following order has been recorded by ACJM:

> "25.6.97: Presented by Sh.Amar Jit Singh. He is identified by his father Sh.Nanak Singh Bedi. The statement of applicant be recorded after lunch, as time is given to application for reflexion. Be put up after lunch.
>
> Sd/-
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> Addl.C.J.M. Court No.1, Mandi."

Thereafter, the court recorded the following order Ext.R-3:

> "Present: Applicant Amarjit Singh in person.
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> Statement of applicant Amarjit Singh recorded as he has voluntarily desired to give statement before this Court.
>
> After ascertaining the facts that the applicant Amarjit Singh is not under any pressure or forced to give statement, his statement is recorded on oath.
>
> Let this statement alongwith application of Amarjit Singh, applicant be submitted to the court of ld.Chief Judicial Magistrate, Mandi for being tagged with the FIR.

Sd/-
Addl.C.J.M., Mandi, H.P."

The statement of Amarjit Singh is Ext.R-4 in which he states that while Pritam Singh deceased was pointing out the place where he had purchased an orchard the scooter skidded and the scooter hit the hillside and they suffered injuries. After recording the statement the following note has been recorded by the ACJM:

> "I have explained to Sh.Amarjit Singh Bedi s/0 Nanak Singh Bedi caste Sikh R/o 152/12 Ramnagar Mandi that he is not bound to make a statement and that, if he does see, any statement he may make may be used as evidence against him and I believe that this statement was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.
>
> Sd/-
> (P. R. Sharma)
> Addl.Chief Judicial Magistrate,
> Court No.1, Mandi (H.P.)"

15. Ext.DA is the copy of the letter sent by Harbans Singh, father of the deceased to the Superintendent of police. This is dated 10th June, 1997 and received in the office of the Superintendent of Police on 12th June, 1997. In this letter it is stated that the accident took place with the truck No.HP-34-0662. There is no mention in this application that when Harbans Singh had visited the police post then he had

seen the scooter in a damaged condition and the scooter had tyre marks on it.

16. I have heard Sh.B.K.Malhotra, learned counsel for the claimants. According to Mr.Malhotra from the record of the forest barrier Bindribani it is apparent that at the relevant time the only truck, which went from, that side loaded with wooden slats was the truck in question. He further argues that the Insurance Company had taken permission of the Tribunal to contest the claim on all grounds under Section 170 of the Motor Vehicles Act but despite this it did not produce the investigation report or the author of the investigation report. He further submits that from the conduct of the driver and owner it is apparent that the accident took place with the truck in question.

17. I am unable to accept the contentions raised by Sh.B.K.Malhotra. From the evidence setout in detail above, it is apparent that initially the case made out was only that the scooter skidded. Even PW-2 Satwant Singh and PW-6 D.N. Gautam do not state that the scooter had met with an accident with any other vehicle. It is natural human instinct to find out how an accident occurred when a person reaches the spot of an accident. Further in this case the pillion rider himself has made a statement on oath before the Magistrate that the scooter had only skidded and not met with an accident with any vehicle.

18. Mr.B.K.Malhotra has strenuously argued that this statement is of no value since according to him this

statement was not made in any case and was not recorded by the Magistrate under any authority of law. Section 164 Cr.P.C. permits any Judicial Magistrate to record any confession or statement and under Section 164(5) any statement made under Sub-Section (1) shall be recorded in such a manner provided for recording for evidence. In this case it was not a confession which was to be recorded but only a statement on oath. The rigours of the procedure to be followed before recording a confession need not be strictly followed when recording a statement.

19. In the present case CW-2 Amarjit Singh has admitted his signatures on the application Ext.R-2 as well as on the statement Ext.R-4. It is true that in the Court he has tried to build up a case that this statement was recorded at the instance of the police. This however is not supported from the record. As per the orders recorded by the Additional Chief Judicial Magistrate the Presiding Officer, it is clear that no policemen were present when the statement was recorded. The Magistrate first kept the matter after lunch and thereafter recorded the statement of Amarjit Singh after making it absolutely clear to him that the statement should be voluntary. The Magistrate satisfied himself that the statement was voluntarily made and thereafter recorded the statement. Why should the police have wanted to get a false statement recorded especially since that statement had no bearing virtually on the police case? This statement was recorded by the Magistrate on

25.6.1997 few days after the accident. The claimants in the claim petition purposely did not give the name of the pillion rider.

20. One important fact to be noted is that the driver of the truck has admitted that he crossed the barrier. However, prior to this three other vehicles had crossed the barrier. Several vehicles had crossed the barrier from both sides. There is no evidence on the record to show as to exactly when the accident took place. PW-2 who is the witness of the claimants has stated that the accident took place between 5.30 to 6 p.m. The statement of Amar Jit Singh in Court does not inspire confidence. He has admitted his signatures on the application and his statement recorded before the Magistrate. There is no evidence whatsoever to link the truck No.HP-34-0662 with the accident in question. In fact there is no evidence to show that the accident occurred with the truck or with any other vehicle. The number of the truck standing on the side of the road has not been disclosed either by PW-2 or by PW-6. It is also surprising that PW-2 Satwant Singh and PW-6 D.N. Gautam who is the District Attorney did not deem it proper to find out if any accident had occurred with some vehicle or with the truck which according to them was standing on the other side of the road. PW-6 was a District Attorney and expected to be well versed with law. Natural human conduct would have been to find out the cause of the accident. Therefore, in my opinion, the petitioners have

set-up a false case and failed to prove that the truck in question was involved in the accident.

21. In view of the above discussion, the appeal merits dismissal and is dismissed with costs assessed at Rs.5000/-. Costs to be paid by the appellant to respondents 1&2.

(Deepak Gupta)
Judge.

January 9, 2006
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